

Philip E. Weiss, Esq. (No.152523)
BRODSKY, MICKLOW, BULL & WEISS, LLP
2608 Shelter Island Drive, Suite 202
San Diego, California 92106
Telephone: (619) 225-8884
Facsimile: (619) 225-8801

Attorney for Plaintiff
Douglas Lambert, dba
Douglas Lambert Insurance Services

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOUGLAS LAMBERT, dba DOUGLAS
LAMBERT INSURANCE SERVICES, an
individual,

Plaintiff,

v.

P/V SAMURAI, Official No. 603902, AND ALL
OF HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*, and JAN KIRK, *in*
personam, KAREN KIRK, *in personam*, THE
JAN AND KAREN KIRK FAMILY TRUST, *in*
personam and PACIFIC OUTDOOR
ADVENTURES, INC, *in personam*,

Defendants.

Case No. **'11CV0712 DMS BGS**

IN ADMIRALTY

VERIFIED COMPLAINT *IN REM*
AND *IN PERSONAM* FOR
FORECLOSURE OF PREFERRED
SHIP'S MORTGAGE AND
DEFICIENCY JUDGMENT

F.R.C.P. Supplemental Admiralty
Rules C and E.

46 U.S.C. Sections 30101-31343

Plaintiff alleges:

1. Plaintiff DOUGLAS LAMBERT, dba DOUGLAS LAMBERT INSURANCE
SERVICES is an individual residing in Santa Barbara, and doing business in Santa Barbara,
California.

2. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the
Federal Rules of Civil Procedure. This Honorable Court has admiralty jurisdiction both *in rem*

1 and *in personam* pursuant to 28 U.S.C. § 1333(1), federal question jurisdiction under 28 U.S.C.
2 section 1331 and the Commercial Instruments and Federal Maritime Lien Act (former the Ship
3 Mortgage Act), which is embodied at 46 U.S.C. sections 31301-31343.

4 3. United States Coast Guard records reflect that the Defendant Vessel P/V
5 SAMURAI, Official No. 603902, (the "DEFENDANT VESSEL"), is a 1979 Kelly's Enterprises
6 inspected passenger vessel of 62.2 feet in length and 19.2 feet in beam, and is now afloat upon
7 the navigable waters of the United States and within the jurisdiction of this Honorable Court.

8 4. On information and belief, PLAINTIFF alleges that Defendant JAN KIRK is an
9 individual residing within San Diego County, California.

10 5. On information and belief, PLAINTIFF alleges that Defendant KAREN KIRK is
11 an individual residing within San Diego, California.

12 6. On information and belief, PLAINTIFF alleges that Defendant JAN AND KAREN
13 KIRK FAMILY TRUST is legal entity organized and existing in San Diego County, California.

14 7. On information and belief, PLAINTIFF alleges that Defendant Pacific Outdoor
15 Adventures, Inc. is the documented owner of the DEFENDANT VESSEL.

16 8. On information and belief, PLAINTIFF alleges that California Secretary of State
17 records reflect the status of Defendant PACIFIC OUTDOOR ADVENTURES, INC. as
18 "SUSPENDED."

19 9. On or about July 29, 2009, in order to secure an indebtedness justly due and owing
20 to PLAINTIFF, Defendants JAN KIRK, KAREN KIRK, THE JAN AND KAREN KIRK
21 FAMILY TRUST AND PACIFIC OUTDOOR ADVENTURES, INC. (collectively the "*IN*
22 *PERSONAM* DEFENDANTS") executed and delivered to PLAINTIFF a Promissory Note -
23 Monthly Installments (the "Promissory Note") in the principal amount of \$120,387.00, which
24 required them jointly and severally, to tender 60 monthly installment payments, each in the
25 amount of \$2,271.85, commencing the "first day of the calendar month immediately following
26 the month of execution of [the] Promissory Note.

27 10. The Promissory Note provides that if default were to occur all remaining principal
28 sums plus accrued interest would immediately upon demand be due and payable, and that if suit

1 were to be commenced to enforce the terms of the Promissory Note, the *IN PERSONAM*
2 DEFENDANTS shall pay all associated attorneys' fees and costs. A true and correct copy of this
3 Promissory Note is hereto attached as Exhibit A.

4 11. In order to secure an indebtedness justly due and owing to PLAINTIFF on account
5 of the provision of insurance for the benefit of the DEFENDANT VESSEL and her owners
6 Defendant JAN KIRK executed and delivered to PLAINTIFF, in his capacity as President of
7 Defendant PACIFIC OUTDOOR ADVENTURES, INC. and in accordance with and pursuant
8 to the Ship Mortgage Act of 1920, as amended, a Preferred Ship Mortgage covering the
9 DEFENDANT VESSEL, and by the terms of that mortgage, assigned, pledged, mortgaged, set
10 over and conveyed the DEFENDANT VESSEL, her engines, tackle, etc., to PLAINTIFF, in
11 order to secure the payment of the Promissory Note described above, and all other obligations
12 of the Preferred Ship Mortgage. A true and correct copy of this Preferred Ship Mortgage is
13 attached hereto as Exhibit "B."

14 12. On information and belief, since the time she was first sold and at all times since
15 the DEFENDANT VESSEL was, and has been, documented with the United States Coast Guard,
16 and that her current hailing port is the Port of San Diego.

17 13. The above described Preferred Ship Mortgage was duly filed with the United
18 States Coast Guard Vessel Documentation Center. The Preferred Ship Mortgage does not
19 stipulate that the mortgagee waived its preferred status. All other requirements of the Ship
20 Mortgage Act of 1920, as amended, were met or caused to be met, either by PLAINTIFF
21 mortgagee or the United States Coast Guard Documentation Center. The mortgage debt is a
22 valid preferred ship mortgage lien, and PLAINTIFF mortgagee is entitled to the priority
23 accorded it as a matter of law.

24 14. PLAINTIFF made repeated requests and demands of Defendant JAN KIRK, the
25 President of the corporate owner of the DEFENDANT VESSEL, for payment of sums due under
26 the Promissory Note, which demands and requests, despite promises of payment, ultimately went
27 unheeded.

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1 15. On March 23, 2011 PLAINTIFF's attorney wrote Defendant JAN KIRK a letter
 2 (dispatched via Certified and First Class U.S. Mail) in which demand was made for payment
 3 within five days of the sum then due under the Promissory Note (\$126,372.08), or alternatively
 4 that acceptable payment arrangements be in place within such period, and notifying Defendant
 5 JAN KIRK that if payment was not tendered or payment arrangements arrived at PLAINTIFF
 6 would file a vessel arrest action and seek an Order authorizing the arrest of the DEFENDANT
 7 VESSEL. Defendant JAN KIRK has not responded in any way to counsel's letter.

8 16. The *IN PERSONAM* DEFENDANTS have breached their agreements set forth in
 9 the Promissory Note described above and have refused or neglected to pay the indebtedness
 10 secured by the Preferred Ship Mortgage described above in accordance with its terms. They
 11 have defaulted in failing to pay any monthly installments of principal and interest due. There
 12 is presently (as of March 23, 2011) due and unpaid a sum of not less than \$126,372.08, including
 13 principal and interest calculated at five percent (5%) per annum, as provided for in the
 14 Promissory Note. Interest continues to accrue at the contractual rate of five percent (5%) per
 15 annum, as specified in the above referenced Promissory Note.

16 17. PLAINTIFF has incurred and will incur reasonable attorneys' fees, collection costs
 17 and expenses, and may be caused to make advances and sustain damages by reason of the
 18 defaults of the Defendants, all in amounts not presently ascertainable. PLAINTIFF will amend
 19 its pleadings to correctly allege the proper amounts when they become known.

20 **WHEREFORE**, PLAINTIFF prays:

21 1. That process in due form of law pursuant to this Court's Admiralty and Maritime
 22 Jurisdiction issue against the DEFENDANT VESSEL, her rigging, tackle, apparel, furniture,
 23 engines, bunkers, and all other necessities thereunto appertaining and belonging, and that all
 24 persons claiming any interest in her be cited to appear and answer this Verified *in rem*
 25 Complaint; that Defendants JAN KIRK, KAREN KIRK, THE JAN AND KAREN KIRK
 26 FAMILY TRUST and PACIFIC OUTDOOR ADVENTURES, INC. be cited to appear and
 27 answer this Verified Complaint.

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1 2. That the Preferred Ship Mortgage be declared to be a valid and subsisting lien, as
2 above described, in an amount of not less than \$126,372.08 (as of March 23, 2011), plus
3 additionally accruing interest at the rate of five percent (5%) per annum, late charges and other
4 contractually recoverable fees, and that PLAINTIFF recover said amounts, together with all
5 other amounts which have been or are required to be disbursed by PLAINTIFF for the care,
6 insuring, preservation, storage and mooring of DEFENDANT VESSEL during the pendency of
7 this action, and all other advances, expenses, attorneys' fees, costs and disbursements by
8 PLAINTIFF, together with post-judgment interest at the maximum statutory rate, with such lien
9 declared to be prior and superior to the interest, maritime and non-maritime liens or claims of
10 any and all persons, firms or corporations whatsoever which arose after the date the Preferred
11 Ship Mortgage was filed with the United States Coast Guard Vessel Documentation Center;

12 3. That the DEFENDANT VESSEL, her rigging tackle, apparel, furniture, engines,
13 bunkers, and all other necessities thereunto appertaining and belonging be condemned and sold
14 to pay the demands and claims of PLAINTIFF, with interest and costs, and that PLAINTIFF may
15 become a purchaser permitted to credit bid any amounts adjudged to be owing at any sale of the
16 mortgaged property, if the Court determines PLAINTIFF's maritime lien is senior to all others;

17 4. That it be decreed that any and all persons, firms or corporations claiming any
18 interest in the DEFENDANT VESSEL are forever barred and foreclosed of and from all right
19 or equity of redemption or claim of, in, or to the mortgaged vessel and every part thereof;

20 5. That PLAINTIFF recover from Defendants JANKIRK, KAREN KIRK, THE JAN
21 AND KAREN KIRK FAMILY TRUST and PACIFIC OUTDOOR ADVENTURES, INC. The
22 amount of any deficiency, including attorneys' fees, expenses and costs that may be due the
23 PLAINTIFF after applying the proceeds of the sale of the mortgaged DEFENDANT VESSEL
24 to the sums decreed as due under the Promissory Note and Preferred Ship Mortgage.

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1 6. That PLAINTIFF have such other and further relief as in justice it may be entitled
2 to receive.

3 April 1, 2011

Respectfully submitted,

4 BRODSKY, MICKLOW, BULL & WEISS

5 s/Philip E. Weiss

6 Attorney for Plaintiff

E-mail: shiplaw@earthlink.net

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VERIFICATION

I, Douglas Lambert, declare under penalty of perjury under the laws of the United States and the State of California as follows:

1. I am the Plaintiff in this action. I am informed and believe that the matters stated in the above Verified Complaint are true and correct.

If called to testify as to the foregoing matters, I could and would competently so testify.

Executed this 5 day of April, 2010 at SAN DIEGO, California.



Douglas Lambert

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DOUGLAS LAMBERT, dba DOUGLAS LAMBERT INSURANCE SERVICES, an individual

(b) County of Residence of First Listed Plaintiff Santa Barbara

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brodsky Micklow Bull & Weiss, 2608 Shelter Island Drive, Suite 202, San Diego, CA 92106 - Phone: (619) 225-8884

DEFENDANTS

P/V SAMURAI, Official No. 603902, AND ALL HER ENGINES, TACKLE, ACCESSORIES, etc., in rem

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0712 DMS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input checked="" type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

46 U.S.C. sections 31301, et seq. 28:1331 - Federal Question (JMD)

Brief description of cause:

Foreclosure on Maritime Lien

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ 126,372.08 + accruing interest, fees, costs, attorney fees, post judgment interest
- CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

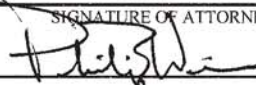
JUDGE

DOCKET NUMBER

DATE

04/06/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE